Application Nos.223 to 225 of 2004
in
I.P.No.84 of 2001

R.SUBBIAH, J.

All the above three applications have been taken out by the Official Assignee under Sections 7, 55 & 68 (1)(a) of the Presidency Towns Insolvency Act, 1909 seeking to declare the sale deeds executed by the Insolvents as null and void and not binding on the Official Assignee.

2-1.Application No.223 of 2004 has been filed seeking to declare the execution of sale deed dated 19.03.2001 by the 2nd respondent-Pradeep in favour of the 3rd respondent-Baskar, registered as Document No.2586/2001 on the file of the Sub-Registrar, Gudiyatham described in the schedule to the judge's summons, as null and void and not binding on the official assignee.

2-2.Application No.224 of 2004 has been filed seeking to declare the execution of the sale deed dated 05.03.2000 registered as Document No.1167/2000 on the file of the Sub-Registrar, Gudiyatham, by the Insolvent in favour of the 2nd respondent-Mrs.T.Sumangali, in respect of the property described in the schedule to the Judge's summons, as null and void and not binding on the Official Assignee.

2-3.Application No.225 of 2004 has been filed seeking to declare the execution of the sale deed dated 05.03.2000 by the respondents 1 to 6 in favour of the 7th respondent-Mrs.Ambika and registered as Document No.1166/2000 on the file of the Sub-Registrar, Gudiyatham, described in the schedule to the Judge's summons, as null and void and not binding on the Official Assignee.

3.The 1st respondent in A.No.223/2004 viz., G.M.Jayaraman and his father J.Thiyagarajan were declared as Insolvents in the I.P.No.84 of 2001 by order of this Court dated 12.06.2001. Consequent upon the same, all the assets of the Insolvents, wherever situate, vested with the Official Assignee under the provisions of the Presidency Towns Insolvency Act. During the course of investigation into the assets of the Insolvents, the Official Assignee came to know that the Insolvents intend to defeat the interest of the general body of creditors and to alienate certain properties; hence, the Official Assignee has filed the above three applications to declare the sale deeds executed in respect of properties of the Insolvents, as null and void and not binding on the Official Assignee.

4.According to the Official Assignee, during the course of the investigation into the assets of Insolvents, the Official Assignee came to know that the following properties are owned by the Insolvents.

(i)vacant housing plots bearing No.64, 65, 80, 81 & 81-At at Kamatchi Garden, Vinayagapuram, Gudiyatham, Vellore totally measuring 9186 sq.ft., which is the subject property in A.No.223 of 2004.

(ii)land and shed at Old No.4A, New No.23, Sannathi Street, Peranampet Road, Nellorepet, Gudiyatham, Vellor, which is the subject property in A.No.224 of 2004.

(iii)land/building bearing Old No.8, New No.32, Sannathi Street, (Peranampet Road), Nellorpet, Gudiyatham, Vellore District; the total extent of the land is 284 sq.ft and the total constructed area of the building is 675 sq.ft, which is the subject property in A.No.225 of 2004.

5-1. In the affidavit filed in support of A.No.223 of 2004, it has been averred that in respect of the property viz., *vacant housing plots bearing No.64, 65, 80, 81 & 81-At at Kamatchi Garden, Vinayagapuram, Gudiyatham, Vellore, totally measuring 9186 sq.ft.*,

the 1st respondent-Insolvent G.M.Jayaraman has executed a general power of attorney in favour of the 2nd respondent-Mr.Pradeep, who in turn has executed a sale deed in respect of the said property in favour of the 3rd respondent-Basker. The sale deed was registered as Document No.2586/2001 on the file of the Sub-Registrar, Gudiyatham, dated 19.03.2001. The consideration disclosed in the sale deed is Rs.50,000/-, which is gross under valuation. The valuation of the property according to the valuation report is Rs.3,70,000/-.

5-2. In the affidavit filed in support of Application No.224 of 2004, it has been averred that the 1st respondent/Insolvent, by sale deed dated 05.03.2000 registered as Document No.1167/2000 on the file of the Sub-Registrar, Gudiyatham, conveyed the property viz., l*and and shed at Old No.4A, New No.23, Sannathi Street, Peranampet Road, Nellorepet, Gudiyatham, Vellore*, in favour of one Mrs.T.Sumangali (R2 in A.No.224/2004) for a sale consideration of Rs.1,09,000/-. The recitals in the sale deed states that in order to discharge some sundry credits on an urgent basis the property was transferred in favour of the said Mrs.T.Sumangali. The valuation of the property according to the valuation report as on 05.03.2000 is Rs.13,00,000/-. The property has been sold for a lesser value of

Rs.1,09,000/- with an intention to defeat interest of the general body of creditors.

5-3. In the affidavit filed in support of Application No.225 of 2004 it has been averred that the subject property viz., *land and building bearing Old No.8, New No.32, Sannathi Street, (Peranampet Road), Nellorpet, Gudiyatham, Vellore District; the total extent of the land is 284 sq.ft and the total constructed area of the building is 675 sq.ft*., was sold by the Insolvants to the 7th respondent-Mrs.Ambika, by a sale deed registered as Document No.1166/2000 on the file of the Sub-Registrar, Gudiyatham, dated 05.03.2000. The consideration disclosed in the sale deed is Rs.1,25,000/-. The valuation of the property according to the valuation report is Rs.3,70,000/- as on 19.03.2001.

Application No.223 of 2004

6-1. In so far as Application No.223 of 2004 is concerned, the learned counsel appearing for the Official Assignee submitted that the Insolvent-G.M.Jayaraman executed a Power of Attorney Deed in favour of the one Pradeep (2nd respondent in A.No.223/2004), in respect of his property viz. *vacant housing plots bearing No.64, 65, 80, 81 & 81-*

At at Kamatchi Garden, Vinayagapuram, Gudiyatham, Vellore totally measuring to an extent of 9186 sq.ft. The said Pradeep sold the property in favour of one Basker (R3 in A.No.223/2004). But, the sale consideration paid to the Insolvent-G.M.Jayaraman has not been proved by the documents. Though the Insolvent G.M.Jayaraman was an income tax assessee, he has not produced any income tax assessment in respect of the sale deeds alleged to have been executed by him during the course of his evidence. It is further submitted by the learned counsel for the Official Assignee that though the property was subsequently sold to the said Baskar, he was not examined on the side of the Insolvents. In the sale deed the sale consideration was disclosed as Rs.50,000/-. But, the valuation report filed by the Engineer would show that actual value of the said property is Rs.3,70,000/-. In order to prove the value of the property, the Valuer/Engineer was examined as P.W.2 and valuation report was marked as Ex.P.2. Thus, it has been established by the Official Assignee that the property has been sold for a lesser amount with an intention to defeat the interest of the general body of creditors of the Insolvents.

6-2. The learned counsel appearing for the Official Assignee has

further submitted that the said Pradeep (R2 in A.No.223/2000), who is said to have purchased the property from the Insolvent-G.M.Jayaraman in and by an unregistered sale deed, was examined as R.W.1 and he has stated in his evidence that he knew the Insolvents for several years and he is a local resident of Gudiyatham and he is well aware of the circumstances of the Insolvents. Thus, the learned counsel for the counsel for the Official Assignee submitted that there is no good faith on the part of the transferee, in purchasing the property of the insolvant.

Application No.224 of 2004

7. In so far the Application No.224 of 2004 is concerned, it is the submission of the learned counsel appearing for the Official Assignee that originally the subject property viz., *land and shed at Old No.4A, New No.23, Sannathi Street, Peranampet Road, Nellorepet, Gudiyatham, Vellore*, was sold by the Insolvent to one T.Sumangali for a sale consideration of Rs.1,09,000/-; Subsequently, the said T.Sumangali sold the property to one Durairaj (2nd respondent in A.No.224 of 2004). But, as per the valuation report filed by the Engineer, the value of the said property is Rs.13,00,000/-. It is further submitted by the learned counsel for the Official Assignee that

on the side of the respondents the father of the subsequent purchaser Durairaj viz., A.K.Karunakaran was examined as R.W.1; but, in his evidence he has admitted that his residential house is situated next to the house of the insolvents and he is aware of the fact that the Insolvents have debts.

Application No.225 of 2004

8. In so far as Application No.225 of 2004 is concerned, it is the submission of the learned counsel for the Official Assignee that originally the subject property viz., *land and building bearing Old No.8, New No.32, Sannathi Street (Peranampet Road), Nellorepet, Gudiyatham, Vellore District,* was sold by the insolvents to one Mrs.Ambika (R7 in A.No.225 of 2004) on 05.03.2000 by the sale deed registered as Document No.1166/2000, for a consideration of Rs.1,25,000/-. But, as per the valuation report filed by the Valuer/Engineer, the value of the property is Rs.3,70,000/-. The purchaser-Mrs.Ambika knew the circumstances of the insolvent.

9. In respect of all the above three applications, it is the sum and substance of the submissions made by the learned counsel for the Official Assignee is that the properties have been sold for lesser value

with an intention to defeat the interest of the general body of the creditors. There is no good faith on the part of the transferees and the sale considerations mentioned in the sale deeds do not disclose the true value of the properties. Further, the purchasers/transferees are also aware of the circumstances of the vendor/Insolvent. There is a lack of good faith on the part of the transferees in having the sale deeds executed in their favour. The intention of the respondents is only to delay and defeat the interest of the general body of the creditors. Hence, all the sale deeds executed by the Insolvents in favour of the transferees are liable to be declared as null and void.

10. Per contra, it is the submission of the learned counsel for the respondents that in Application Nos.223 & 224 of 2004, only one of the Insolvents viz., G.M.Jayaraman was shown as 1st respondent. In this regard, the learned counsel for the respondents invited the attention of this Court to the evidence of R.W.1s in Applicant Nos.224 & 225 of 2004 and submitted that R.W.1s in those applications viz.,A.K.Karunakaran and V.Pichandi stated in their evidence that they are not aware of the insolvency petition filed by the insolvents and that only after receiving the summons from the Court, they came to know about the Insolvency Petition filed by the Insolvents to declare them as

insolvents. The subject properties were purchased by the purchasers/transferees only for a valuable consideration and the sale transactions are bone fide transactions. Therefore, it is incorrect to state that there is no good faith on the part of the transferees. The learned counsel for the respondents, by inviting the attention of this Court to the evidence of P.W.2-Valuer/Engineer, submitted that in his evidence, P.W.2-Valuer/Engineer has admitted that he did not verify the guideline value of the subject properties; the valuation report was not supported by any documentary evidence. In this regard, the learned counsel for the respondents invited the attention of this Court to the Insolvency Petition filed by the Insolvents and submitted that the Insolvency Petition was filed in the year 2001 and in the Insolvency Petition, the Insolvents have stated that they are residing in Madras for the past five years; under such circumstances, the submission made by the learned counsel for the Official Assignee that the purchasers/transferees knew the circumstances of the insolvents cannot be accepted. Further, in the Insolvency Petition, the subject properties were not shown as the properties of the Insolvents. The learned counsel for the respondents further submitted that the present applications have been filed only on surmises, without any valid ground. In support of his contentions, the learned counsel for the

respondents relied on the following judgments_ *(i)2004-1 L.W. 119 (Sankar Ram and Co. Vs. Kasi Naicker and others); (ii)(2009) 8 MLJ 753 (S.Baskar Vs. P.Vijaya Sekar Reddy).*

11. I have carefully heard the submissions made on either side and perused the materials available on record.

12. It is the submission of the learned counsel for the Official Assignee that there is no good faith on the part of the purchasers in purchasing the properties from the Insolvants and the properties were purchased by the purchasers only with a sole intention to defeat the interest of the General Body of Creditors of the Insolvents. In support of his contention, the learned counsel appearing for the Official Assignee has submitted that the properties were purchased by the purchasers for lesser value. Further, the purchasers have admitted that they knew the circumstances of the Insolvents and they are also residing in Gudiyatham, where the Insolvents were residing.

13. The learned counsel appearing for the Official Assignee has also relied upon the judgment reported in ***AIR 2007 ALLAHABAD 102 [Ram Singh Vs. 7th Additional District Judge, Agra]*** and

submitted that inadequacy of sale consideration is a ground for annulling the sale deed, after holding it as voidable under the provisions of the Provincial Insolvency Act.

14. It is the reply of the learned counsel appearing for the respondents that it is incorrect to state that the properties were purchased by the purchasers/transferees for inadequate sale consideration. In this regard, the learned counsel appearing for the respondents invited the attention of this Court to the evidence of P.W.2-Valuer/Engineer and submitted that P.W.2-Valuer/Engineer has admitted in his evidence that he did not verify the guideline value of the subject properties. The valuation report was not supported by any documentary evidence. It is further submitted by the learned counsel appearing for the respondents that the sale deeds executed in favour of the purchasers/transferees were registered by the Registration Department without any objection.

15. But, irrespective of the submissions made on either side, I am of the opinion that in the instant case, the Official Assignee has made an attempt to create suspicion in the mind of the Court by pointing out certain suspicious circumstances. Merely pointing out of

certain suspicious circumstances alone is not sufficient to come to a conclusion that there is no good faith on the part of the purchasers/treansferees. In fact, in the instant case, though it was argued by the learned counsel appearing for the Official Assignee that all the transferees knew the circumstances of the Insolvents and they are residing in Gudiyatham, near the house of the Insolvents, in the Insolvency Petition it was stated by the Insolvents that they are residing at Chennai for the past five years. Therefore, from the statement made in the Insolvency Petition it is clear that at the relevant point of time, the insolvents are not residing at Gudiyatham. Therefore, I am of the opinion that there is no sufficient evidence to come to a conclusion that the purchasers/transferees knew the circumstances of the Insolvents. Further, in my considered opinion, unless it is satisfactorily established by the Official Assignee that the subject properties were purchased for lesser price and transferees knew the circumstances of the Insolvents, merely pointing out certain suspicious circumstances will not be helpful in any way to declare the sale deeds as null and void. In this regard, a useful reference could be placed in the judgment reported in **2009(8) MLJ 253 (Official Assignee, High Court, Madras Vs. P.Vijaya Sekar Reddy & others),** wherein it has been held as follows_

> "19.The second objection related to the huge difference in sale consideration to the extent of 60 lakhs so as to throw suspicion. But, as pointed out by the Division Bench judgment of this Court, which quoted Mullas Law of Insolvency in India with its approval, inadequacy of price or suspicious circumstances without anything more is not enough to set aside the sale. This is especially in the context that the Supreme Court in *Shankar Ram & Co.* case (cited supra) has held the sale before adjudication is not void but voidable. Further, the division bench has held that the absence of proof of good faith is not to be found on the insolvent, but on the transferee. No such averments have been made against R4 and R5 or found in the application. Hence it is not a fit case where the matter should be sent for recording evidence on this issue in the absence of pleadings."

The dictum laid down in the above judgment is squarely applicable to the present facts of the case. In the instant case, I am of the opinion that except pointing out certain suspicious circumstances, the Official Assignee has not satisfactorily established that there is no good faith on the part of the purchasers. Since the Official Assignee has not satisfactorily proved their case, other submissions made by the learned counsel for the Official Assignee that non-examination of purchasers of the property in Application No.223 of 2004 has also no significance in

this matter. Therefore, I am not inclined to entertain these applications.

In the result, the applications are liable to be dismissed and accordingly, the same are dismissed.

15.12.2014

Internet : Yes / No

Index : Yes / No

R.SUBBIAH, J.

(ssv)

Pre-delivery order
in

A.Nos.223 to 225 of 2004
in
I.P.No.84 of 2001

15.12.2014